

Let me give a little background on the present H-2A program and why so few agricultural employers utilize it.

The H-2A program is a program for non-immigrant, work-related, temporary visas authorized by the Immigration and Naturalization Act. It is regulated and administered by the United States Department of Labor. Although its purpose is to allow producers to have access to an adequate legal seasonal workforce when domestic workers are unavailable, participation in the H-2A program is time consuming, bureaucratic, and inefficient.

A producer must complete a complicated application process which involves sequential approval by a State agency and three Federal agencies. As presently designed, administered, and enforced, H-2A employers must complete a great deal of paperwork during the application process. They must then coordinate and track their workers through a Bureau of Customs and Immigration Services and State Department visa approval system. Once the workers are present on the farm, these employers must also comply with all aspects of the Immigration and Naturalization Act, the Migrant Seasonal Protection Worker Act, the Fair Labor Standards Act, and various OSHA regulations regarding housing and field sanitation.

Redtape aside, another serious issue with the current H-2A program is that it requires employers to pay the Adverse Effect Wage Rate, which is determined by an archaic survey conducted since the 1930s. This survey was never designed to capture prevailing wages within a specific geographical area nor does it specify the type of work that is being done for that wage. In my home State of Georgia, the present wage an employer must pay for an unskilled farm worker is \$8.30 per hour. This wage is in addition to free housing and reimbursement for all transportation costs. All of these expenses make it very difficult for these H-2A employers to compete with producers who do not or cannot use the program and who then pay workers they are able to find between \$5.15 and \$6.15 per hour.

We have millions of illegal workers on farms in this country. We have a program that will allow growers to use legal workers. The fact so few agricultural employers take advantage of H-2A is simple. It is too complicated, too costly, and much too litigious.

The legislation that Senator KYL and I have introduced simplifies the H-2A program by streamlining the application process to involve fewer Government entities in the final approval. Under this bill, employers who wish to use H-2A workers will go through an attestation process, rather than a lengthy bureaucratic labor certification process. Employers will be allowed to attest to the Department of Homeland Security that they have conducted the required recruitment and were unable to find an adequate number of domestic workers to fill their

labor needs. The Department of Labor will maintain its roll as an auditor to punish those employers who willfully violate the conditions that must be met in the attestation process to obtain H-2A workers. We have increased the penalties to ensure those who continue to employ illegal workers rather than utilize this updated program will pay the costs.

This legislation also addresses the Adverse Effect Wage rate, which many contend has discouraged employers from using the H-2A program. Instead, we move to a wage rate that is more market-oriented and a prevailing wage for each region of the country.

Another important aspect of this legislation is it clearly states that the Legal Services Corporation cannot represent or provide services to a person or entity representing any alien, unless that alien is physically present in the United States. This clarification is needed because of the longstanding and well-documented abuses by the Legal Services Corporation in filing frivolous lawsuits against producers who employ H-2A workers.

By streamlining and modernizing the H-2A program, we can make it easier and more attractive to U.S. agricultural employers and minimize the attraction of using illegal labor.

The second part of our legislation targets the illegal population in this country with the creation of a blue card program. The blue card program is an innovative, new temporary guest worker program. The idea of it is to allow employers who cannot find an adequate domestic workforce to petition on behalf of an immigrant who is currently illegally here to receive a blue card or a temporary status in this country. The petitioning process will require the alien to submit his or her biographical information along with two biometric identifiers to the Department of Homeland Security. This way, we can be sure we are not bestowing the blue card status on a potential terrorist or an alien with a criminal past.

The blue card itself will be a machine-readable, tamper-resistant document that will be capable of confirming, for any immigration official who needs to know, the person holding the blue card is who the card claims he or she is, and the blue card worker is authorized to work in agricultural employment in the United States and the authorization has not expired.

Because the blue card workers will maintain these secure identification documents, they can freely travel between the United States and their home countries. This will allow the blue card workers to maintain ties to their lives and families at home.

It is important to note that by setting the Blue Card Program up on an employer-petition basis, the program has a natural cap built in—one that responds to the U.S. market and our agricultural labor needs. Employers will only petition for as many workers as

needed to fill their labor needs. This is unlike the AgJOBS bill which allows illegal aliens to self-petition.

Once an alien receives a blue card, he or she is eligible to work in the United States for up to three years. The blue card may be renewed up to two times, each at an employer's petitioning. At the end of the second renewal, the blue card worker must return to his or her home country, or country of last residence. This is important. The blue card provides no path to U.S. citizenship, which is contrary to what the AgJOBS bill does. Any blue card worker who wishes to become a U.S. citizen is certainly allowed to do so. All that worker has to do is revoke his or her blue card, return to his or her home country or country of last residence for at least 1 year and apply through the normal process just like everyone else.

An approved blue card worker will receive all the protections U.S. workers will receive. While blue cards are available only to those aliens who work in the agricultural field, this legislation expands a traditional definition of agriculture in recognition of the interdependence on various occupations within the field of agriculture. By including packagers, processors, and landscapers, we not only encourage a larger percentage of our illegal population to come forward, submit to Homeland Security background checks, and get legal work authorization, we also provide some relief to those occupations that have traditionally relied on H-2B visas for foreign workers. As we all know, H-2B visas are in short supply and high demand.

This legislation is important, and I urge the support of my colleagues.

The PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I first wish to express appreciation to the Senator from Georgia for explaining very well both the need for and the description of the legislation on which we will be voting tomorrow, which is our version of the legislation that will help employers in our agricultural sector by including immigration reform which will make it easier for them to obtain workers from both the illegal immigrants who are in the country today as well as those legal immigrants who would be applying under our legislation.

Let me go back to kind of a 30,000-foot elevation view here and describe the reasons we put this legislation together and are offering it at this time. As we have said before, the supplemental appropriations bill, which will be debated again tomorrow as well as later today and which will help pay for our war efforts in Iraq and Afghanistan, is not the appropriate place to be debating immigration. Unfortunately, some of our colleagues saw fit to bring amendments to the Senate floor which related to that subject. One of those amendments is this amendment that deals with agricultural labor. It was at that point that Senator CHAMBLISS and